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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION - LOS ANGELES

12 ST. LUKE SCHOOL OF MEDICINE;
13 DR. JERROLL B.R. DOLPHIN, on
14 behalf of himself and all other similarly
15 situated, as applicable; DR. ROBERT
FARMER, on behalf of himself and all
other similarly situated, as applicable,

16 Plaintiffs,

17 v.

18 REPUBLIC OF LIBERIA; MINISTRY
19 OF HEALTH, a Liberian Governmental
Agency; MINISTRY OF
20 EDUCATION, a Liberian
Governmental Agency; LIBERIAN
21 MEDICAL BOARD, a Liberian
Governmental Agency; NATIONAL
22 COMMISSION ON HIGHER
EDUCATION, a Liberian
23 Governmental Agency; NATIONAL
TRANSITIONAL LEGISLATIVE
24 ASSEMBLY, a Liberian Governmental
Agency; DR. ISAAC ROLAND;
25 MOHAMMED SHERIFF;
26 DR. BENSON BARH; DR. GEORGE
GOLLIN; EDUCATION

Case No. 2:10-cv-01791-RGK-SH

DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS

DATE: July 26, 2010

TIME: 9:00 a.m.

JUDGE: Honorable R. Gary Klausner

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

1 COMMISSION FOR FOREIGN
 2 MEDICAL GRADUATES, a
 3 Pennsylvania Non-Profit organization;
 4 FOUNDATION FOR
 5 ADVANCEMENT OF
 6 INTERNATIONAL EDUCATION
 7 AND RESEARCH, a Pennsylvania
 8 Non-Profit organization; UNIVERSITY
 9 OF ILLINOIS-URBAN, an Illinois
 10 Institution of Higher Learning; STATE
 11 OF OREGON, Office of Degree
 12 Authorization,

13 Defendants.

14 Plaintiffs' claims against the State of Oregon and the Oregon Office of
 15 Degree Authorization (hereafter "State Defendants") should be dismissed because
 16 1) they are barred from proceeding in federal court by the Eleventh Amendment
 17 and 2) the California courts lack personal jurisdiction over an Oregon agency not
 18 doing business in California.

I. Factual Allegations

19 Plaintiffs filed their Complaint on April 14, 2010. Plaintiffs allege that the
 20 State Defendants are liable for "defamatory" comments made by co-Defendant Dr.
 21 George Gollin that were "publish[ed] and hosted" on the Office of Degree
 22 Authorization's website. *Compl.*, p. 66. Dr. Gollin, an employee of the University
 23 of Illinois – Urbana Champaign, posted self-published statements on the website of
 24 the University of Illinois beginning in 2003. *Id.*, p. 55. Dr. Gollin, among other
 25 statements, described St. Luke Medical School as a "diploma mill." Plaintiffs'
 26 Complaint alleges that Dr. Gollin, "attempting to avert attention from the
 University of Illinois, shipped his entire website, with all its contents to the State of
 Oregon's Office of Degree Authorization's website, where it is now currently
 housed." *Id.*, p. 58. By "publishing and hosting" Gollin's statements, Plaintiffs
 DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

1 allege that the State Defendants “continue to defame” St. Luke School of
 2 Medicine. *Id.*, p. 58.

3 **II. Motion to Dismiss Standard**

4 Fed. R. Civ. P. 12(b)(6) requires dismissal of a complaint when it appears
 5 that the plaintiff can prove no set of facts in support of his claims that would entitle
 6 him to relief. *Strother v. So. Cal. Permanente Medical Group*, 79 F.3d 859 (9th Cir.
 7 1996).

8 **III. Argument**

9 **A. Plaintiffs’ claims against the State Defendants are barred by the** 10 **Eleventh Amendment.**

11 Under the Eleventh Amendment to the U.S. Constitution, federal courts may
 12 not entertain a lawsuit brought by a citizen against a State, its agencies, or
 13 departments without the State’s consent. *Seminole Tribe of Florida v. Florida*, 517
 14 U.S. 44, 54, 116 S. Ct. 1114 (1996), citing *Hans v. Louisiana*, 134 U.S. 1, 13, 10 S.
 15 Ct. 504 (1890); *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100,
 16 104 S. Ct. 900 (1984). “Although the State of Oregon has consented to be sued in
 17 Oregon courts for the torts committed by its employees, officers, or agents while
 18 acting within the course and scope of their employment under the OTCA, it has not
 19 consented to be sued in federal courts for those torts.” *Blair v. Toran*, CV-99-956-
 20 ST, 1999 U.S. Dist. LEXIS 20033, at *69 (D. Or. Dec. 2, 1999). As the State
 21 Defendants have not expressly consented to be sued by Plaintiffs in a federal court,
 22 all of Plaintiffs’ claims against the State Defendants must be dismissed pursuant to
 23 the Eleventh Amendment.

24 **B. This court lacks personal jurisdiction over the State Defendants.**

25 The parameters of personal jurisdiction are set forth in Rule 4(k) of the
 26 Federal Rules of Civil Procedure. Whether or not personal jurisdiction exists in
 DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

1 this Court over the State Defendants is determined by the provisions of Rule
 2 4(k)(1)(A), *i.e.*, would the State Defendants be subject to the jurisdiction of a court
 3 of general jurisdiction in California?

4 California permits the exercise of personal jurisdiction to the full extent
 5 permitted by due process. *Stone v. State of Texas*, 76 Cal.App.4th 1043, 1047, 90
 6 Cal.Rptr.2d 657 (1999) ["California's long-arm statute permits courts to exercise
 7 jurisdiction over nonresidents on any basis not inconsistent with federal or state
 8 constitutions. (Code Civ. Proc. 410.10.)"] Whether a California court would have
 9 personal jurisdiction over the State Defendants is dependent upon whether the
 10 plaintiff has alleged "minimum contacts" between the State Defendants and the
 11 State of California for purposes of general or specific jurisdiction. *Bancroft &*
 12 *Masters, Inc., v. Augusta Nat., Inc.*, 223 F.3rd 1082, 1086 (9th Cir. 2000). As noted
 13 by the *Stone* court, "When a defendant moves to quash service of process on
 14 jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts
 15 justifying the exercise of jurisdiction." *Stone v. State of Texas*, 76 Cal.App.4th
 16 1043, 1048, 90 Cal.Rptr.2d 657 (1999).

17 General jurisdiction requires that the contacts be of the sort that approximate
 18 physical presence. *Bancroft & Masters, Inc., v. Augusta Nat., Inc.*, 223 F.3rd 1082,
 19 1086 (9th Cir. 2000). There are no facts alleged in the Complaint that suggest that
 20 Plaintiff is claiming general jurisdiction over the State Defendants.

21 Absent general jurisdiction, the California Supreme Court has determined
 22 the defendant "still may be subject to specific jurisdiction of the forum, if the
 23 defendant has purposefully availed himself or herself of forum benefits [citation],
 24 and the 'controversy is related to or 'arises out of' a defendant' contacts with the
 25 forum.'" *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 446, 58
 26 Cal.Rptr.2d 899, 926 P.2d 1085 (1996). Federal courts are in accord. The Ninth
 DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

1 Circuit, in *Bancroft*, explained that in order for there to be specific jurisdiction: (1)
 2 the defendant must have performed some act or consummated some transaction
 3 within the forum or otherwise purposely availed itself of the privileges of
 4 conducting activities in the forum; (2) the claim must arise out of or result from the
 5 defendant's forum related activities; and (3) the exercise of jurisdiction must be
 6 reasonable. *Ziegler v. Indian River County*, 64 F.3d 470, 474 (9th Cir. 1995).

7 **i. Purposeful Availment.**

8 The "purposeful availment" prong of the first element of the specific
 9 jurisdiction analysis may be met in a tort case by what is called an "effects test" if
 10 the defendant (1) committed an intentional act that was (2) expressly aimed at the
 11 forum state, and (3) caused harm, the brunt of which is suffered and which the
 12 defendant knows is likely to have been suffered in the forum state. *Bancroft &*
 13 *Masters, Inc., supra*, 223 F.3d at 1087. The Ninth Circuit has also noted that the
 14 effects test "cannot stand for the broad proposition that a foreign act with
 15 foreseeable effects in the forum state always gives rise to specific jurisdiction."
 16 *Id.* There must be "something more." *Id.* The something more involves the
 17 "express aiming" at the forum state. That term does not define itself, but the cases
 18 indicate that the term "encompasses wrongful conduct individually targeting a
 19 known forum resident." *Id.* It must be distinguished from "untargeted
 20 negligence." *Id.* at 1087-88. It is the presence of individualized targeting of a
 21 known forum resident that separates the cases finding jurisdiction under the effects
 22 test from those cases in which the effects test is unsatisfied. *Id.* at 1088. Here,
 23 Plaintiffs have not met their burden of demonstrating the State Defendants
 24 purposely availed themselves of California law. *Ziegler, supra*, 64 F.3rd at 474;
 25 *Stone, supra*, 76 Cal.App.4th at 1048.[1][2]
 26

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1 **ii. There Must be Forum-Related Activity by the Defendant.**

2 The second prong of the specific jurisdiction test requires that the claim
3 arises out of or results from the defendant's forum-related activities. In the Ninth
4 Circuit, this involves a "but-for" test. *Bancroft & Masters, Inc., supra*, 223 F.3d at
5 1088. The test is not met if the causal connection is significantly attenuated. *Doe*
6 *v. American National Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997). In this
7 case, Plaintiff's make no allegations that tie the State Defendants to California in
8 any way.

9 California courts are authorized to exercise jurisdiction "on any basis not
10 inconsistent with the Constitution of [California] or of the United States."
11 California Rules of Civil Procedure §410.10. The Fourteenth Amendment limits
12 the extent of personal jurisdiction to those instances that do not violate Due
13 Process rights. The State Defendants operate a website that allows materials to be
14 accessed from any Internet-ready computer. State Defendants do not sell
15 information or materials via their website, nor do the State Defendants interact in
16 any other way with visitors to their website. The website operated by the Oregon
17 Office of Degree Authorization merely post information and has no interactive
18 features. "A passive website that does little more than make information available
19 to those who are interested in it is not grounds for the exercise of personal
20 jurisdiction." *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119,
21 1121 (W.D. Penn. 1997). See also *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414
22 (C.A.9 Ariz. 1997). (Adopting the *Zippo* standard in the Ninth Circuit). As
23 Plaintiffs have failed to establish personal jurisdiction in a California court over the
24 State Defendants, Plaintiffs' claims as to those Defendants should be dismissed.
25
26

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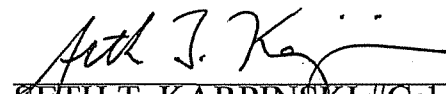
1 **CONCLUSION**

2 Plaintiffs' claims are barred from proceeding against the State Defendants in
3 federal court. Additionally, Plaintiffs have failed to establish that there is
4 personal jurisdiction over the State Defendants in this Court. As such, all claims
5 against the State Defendants should be dismissed.

6 DATED this 2nd day of June, 2010.

7 Respectfully submitted,

8 JOHN R. KROGER
9 Attorney General

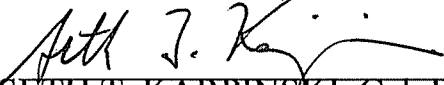
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CERTIFICATE OF SERVICE

I certify that on June 2, 2010, I served the foregoing DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS upon the parties hereto by the method indicated below, and addressed to the following:

Thaddeus Julian Culpepper, SBN	<input type="checkbox"/> HAND DELIVERY
220194	<input type="checkbox"/> MAIL DELIVERY
Culpepper Law Groupe	<input type="checkbox"/> OVERNIGHT MAIL
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